STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
February 15, 2011

In the Matter of FARLEY, Minors.

No. 299024
Macomb Circuit Court
Family Division
LC Nos. 2008-000033-NA
2008-000034-NA
2008-000035-NA

Before: BORRELLO, P.J., and JANSEN and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right from an order that terminated her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). The parental rights of the children's father were also terminated, but he is not participating in this appeal. For the reasons set forth in this opinion, we affirm.

I. FACTS AND ANALYSIS

The children were removed from respondent's care in January 2008 on allegations that respondent was being evicted from her home and was suffering from mental health issues. Respondent admitted allegations in the petition in February 2008, at which time the children were made temporary wards. Respondent was asked to submit to a psychological evaluation, attend parenting classes, attend individual counseling, take her medication, obtain housing and income, and visit with the children. Respondent's visits were briefly suspended in June 2008 because she continued to display disturbing behavior during visits. However, almost immediately thereafter respondent began to whole-heartedly embrace her treatment plan and was fully compliant for a year. Respondent's sister supervised her drug regimen and, along with the agency, made sure that respondent got to her appointments. The children, although doing well in foster care, enjoyed their time with respondent and each other during visits. Respondent was granted unsupervised day visits, which progressed to unsupervised night visits, until the Family Reunification Program (FRP) could begin services.

The children were eventually returned to respondent's care in June 2009. Two referrals were received shortly thereafter; however, neither was substantiated and neither served as the basis for the children's second removal in October 2009. Rather, it was respondent's behavior toward the children and the FRP workers that was problematic. Though initially grateful for the assistance FRP provided to help her secure SSI income and provide access to food and furniture

pantries, respondent began to act differently once the focus shifted from concrete and basic needs to her actual parenting techniques and rule-making. When workers attempted to discuss parenting issues with respondent, she would simply say she did not want to talk about it. In the meantime, it was clear that respondent was under a great deal of stress with all three children at home. Workers observed her to be very anxious and unsettled. In August 2009, when a Judson worker was driving the family to register respondent's oldest child, then 15 years old, for school, respondent became enraged at the children. In a voice the worker described as "more than yelling . . . to the point where she was spitting on my arm . . . ," respondent threatened the children that she "would give them to their Aunt [] when this was all over."[1] She told the worker that she was sick of the children's behavior and ordered the 15-year-old to walk home from the school. The Judson worker did not fear for the children's physical safety, but she worried about their emotional well-being. An emergency hearing was held a few days later. Respondent was admonished to allow the workers to counsel her on substantive parenting issues. Respondent was also reminded to maintain her drug regimen and attend therapy.

Things only got worse after the August 28, 2009, hearing. In fact, respondent no longer allowed the workers into her home. She became belligerent and none of the workers felt safe going alone to respondent's home. As a result of respondent's behavior and noncompliance, FRP discontinued services. There were also several instances where respondent could not account for the children's whereabouts. It was clear that she was having difficulty supervising them. Respondent was invited to participate in a Team Decision-Making Meeting to see whether the issues could be resolved without removing the children, but respondent said she could not attend because her "brain hurt" and hung up on the worker. The children were removed from her care once again in October 2009. Even at a November 2009 hearing, the worker and the children's GAL remained hopeful that respondent was experiencing a momentary lapse and would soon get back on track with increased therapy. However, the caseworker sadly declared in February 2010 that, based on the progress reports she had reviewed, the goal of the case needed to be changed from reunification to termination. The GAL reluctantly agreed.

At the termination hearing, it was revealed that respondent's failure to attend therapy from November 2009 until January 2010 was not entirely her fault. New Passages was undergoing a structural change that left many patients looking for alternative programs. Respondent entered the Ventures program and appeared to be doing well. She was compliant with the therapeutic aspect of treatment and was actually receiving her medication via shots. However, respondent became angry at a report that indicated she showed signs of having hallucinations and may have been suffering from a delusional disorder. Respondent thus voluntarily discontinued the program and went back to New Passages. Although she claimed to be compliant with the New Passages program, respondent refused to sign a release so that the agency could receive progress reports, stating that she would only sign the release if the reports would be favorable to her case. Therefore, at the time of the termination hearing, there was no way to gauge respondent's progress.

[1] Testimony presented indicated that respondent had on numerous occasions told the children that she would give them to their aunt when these proceedings had concluded.

On appeal, the GAL takes a very strong position that a mistake was made in terminating respondent's parental rights. Rather then speaking for the children, which is the proper role of the GAL, the GAL appears to have taken on the role as respondent's advocate, as she is extremely critical of her real clients, the minor children. We are not persuaded by the arguments of the GAL based in large part because she is too dismissive of important and legally determinative events. For example, the GAL believed it was perfectly reasonable for respondent to order her 15-year-old son to walk home after he misbehaved in the car. However, the worker who observed the exchange indicated that respondent had completely over-reacted to the situation. In the opinion of the worker who actually witnessed the events, respondent evidenced disgust with the children in a way that was not acceptable and caused the worker to fear for the children's mental and emotional well-being. Additionally, even if respondent was merely dealing with normal teenage behavior, the simple fact remains that she was not amenable to services. At some point after the children's return in the summer of 2009, respondent simply refused to allow the services to continue. Respondent was either not taking her medication, or she was taking her medication but not benefiting from it. Either way, the record is clear that respondent was completely overwhelmed and unstable. Once respondent's sister encountered problems of her own that necessitated her immediate attention and was therefore unable to assist respondent, the support system which the GAL put so much faith in, ceased to exist. Following the collapse of her support system, according to the testimony of all of those involved in this matter, respondent's level of agitation increased dramatically and it was accompanied by an increasingly frustrating refusal to cooperate with service providers. Her refusal to allow anyone to help or advise her resulted in the children's second removal.

II. LAW AND CONCLUSIONS

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). If a statutory ground for termination is established, and the trial court finds "that termination of parental rights is in the child's best interests the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). On appeal from termination of parental rights proceedings, this Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(K); *Trejo*, 462 Mich at 356-357. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520, reh den 460 Mich 1205 (1999). Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Miller*, 433 Mich at 337.

Respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j), which provide:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
>
> * * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

In recommending termination of respondent's parental rights, the referee found:

Not one of the professionals working with the parents and the children were recommending return of the children to the care of the parent, even with services. Though efforts have been utilized for two and a half years without much success, there is no likelihood that these services would be successful now.

* * *

I'm confident that Ms. Farley loves her children very much and wants them to return to her care. However, the reasons that the children were removed, both times, was due to Ms. Farley's inability to provide proper care for them. She is unable to meet her own needs without assistance, and is unable to maintain contact with the children when they become too loud for her, much less having any other teenage problems.

The foregoing facts established clear and convincing evidence that statutory bases existed for terminating respondent's parental rights. The more difficult question was the children's best interests. MCL 712A.19b(5). It was agreed that respondent and the children shared a very close bond. However, respondent was extremely overwhelmed while they were in her care. She did not provide proper supervision and began behaving strangely again. Unfortunately, respondent was not receptive to services that would have enabled her to properly supervise and care for the children. Additionally, because respondent refused to sign the necessary releases, there was no way to judge her progress in terms of her mental health. The children had been wards for two and a half years. Although there was a point when respondent was making leaps and strides, those improvements came only when the children were out of her care. The actual day-to-day

parenting was simply too much for her. Given the length of time the children had been in care, and respondent's regression and noncompliance, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests. Based on the record and the arguments presented, termination of respondent's parental rights was established by clear and convincing evidence. Additionally, we find that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5); MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Karen M. Fort Hood